

## **WATER INFRASTRUCTURE FINANCING**

**Question:** The Department of the Interior recently announced a new Natural Resource Investment Center that will develop new financing approaches for critical water infrastructure. How is EPA collaborating with the Department of the Interior so there is no duplication of effort?

**Answer:** The EPA's Water Infrastructure and Resiliency Finance Center and DOI's Natural Resource Investment Center are both part of the Administration's Build America Initiative, a government-wide initiative to increase investment in different types of infrastructure across the country. The EPA, DOI, USDA, and DOT have finance centers, and other federal agencies including DOE, HUD, and Treasury participate in this initiative. In addition the EPA, DOI, and USDA finance centers are identifying water-related areas for future collaboration.

### **WATER INFRASTRUCTURE FINANCING**

**Question:** How much additional funding do you anticipate loan recipients will be able to leverage?

**Answer:** According to the EPA's credit subsidy model, which has been preliminarily approved by the OMB, a \$20 million appropriation, with \$15 million used for credit reserve, will allow the EPA to make up to \$1 billion in loans.

### **WATER INFRASTRUCTURE FINANCING**

**Question:** When do you expect to award the first loans?

**Answer:** If funds are appropriated for implementation of the WIFIA program in FY 2017, the EPA expects the first obligation under the program to occur by the end of FY 2017.

### **WATER INFRASTRUCTURE FINANCING**

**Question:** The budget requests an increase of \$157 million for the Drinking Water State Revolving Fund and \$20 million for a new Water Infrastructure Finance and Innovation Authority (WIFIA) loan program, but cuts the Clean Water State Revolving Fund by \$414 million. Focus needs to be on both sides of water infrastructure, conveying and treating waste water so that it doesn't contaminate drinking water. What is the status of the WIFIA program?

**Answer:** The EPA has received appropriations for each of the last two fiscal years for development of the WIFIA program. The EPA has been working toward the final development of all aspects of a federal credit program, including credit subsidy model development, application and guidance development, the creation of agency credit policies, and draft rulemaking. These essential program elements are expected to be fully developed by the end of FY 2016.

### **PESTICIDE PRODUCT LABEL REGISTRATION**

**Question:** Administrator McCarthy, will your agency finalize the registration for new uses of dicamba by the end of this summer such that corresponding state registrations will enable farmers to have the full flexibility of weed control options for the 2017 growing season?

**Answer:** On April 1, 2016, the EPA released the proposed decision to register dicamba for public comment. The public comment period, originally 30 days, has been extended to May 31, 2016. After the closure of the comment period, the EPA will consider the comments received and make a registration decision. The EPA expects to issue a decision by late summer or early fall of 2016.

### **EPIDEMIOLOGY STUDIES**

**Question:** The EPA now relies primarily on three epidemiology studies and some journal articles which the EPA, I am told, had not had access to until recently seen the raw data, making it impossible for the agency to determine if these studies are reliable or accurate. I am told that Columbia University - who conducted the key study had refused to provide the raw data to EPA even though the EPA partially funded the study.

How many rules or regulatory actions have been influenced by this Columbia University research?

**Answer:** The following interim agency actions took the research in question into consideration: chlorpyrifos tolerance revocation proposal (October, 2015); preliminary risk assessments for seven organophosphates (September, 2015); and, revisions to the Certification of Pesticide Applicators (August, 2015). The EPA accepted public comment on all of these actions and there is a publicly available docket for each action available. These actions are not considered final at this time.

In addition, the EPA took the research into account when revising the Worker Protection Standard, which was finalized in September, 2015. In all instances, the research was part of a broader body of scientific evidence that the EPA relied on for each action.

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If this is true, does the EPA plan to make public the data from the contractors and universities that performed the study?

**Answer:** In the summer of 2015, the EPA made another attempt to obtain the raw data from Columbia University. The investigators provided additional summary information on the blood biomonitoring data. The agency has made this additional information publicly available.

In addition, the agency is holding a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel on April 19-21, 2016 to review a new analysis using the blood biomonitoring data from the Columbia University epidemiology study.

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Is the EPA relying on information based on raw data that cannot be reviewed for accuracy?

**Answer:** The agency has not limited the number of studies reviewed to the three epidemiology cohorts. In fact, the agency has reviewed hundreds of studies from laboratory animals, cell systems (including human), biomonitoring, and epidemiology on a variety of scientific areas related to human health effects. These studies were evaluated together in a weight of evidence analysis.

While the EPA strives to ensure that data underlying research it relies upon are accessible to the extent possible, it does not believe that it is appropriate to refuse to consider published studies in the absence of underlying data. The EPA frequently relies on peer reviewed studies in the public literature across agency programs without possessing underlying data and the federal courts have made clear that the EPA is not required to obtain or analyze the raw data in order to rely on such studies. If the EPA and other governmental agencies could not rely on published studies without conducting independent analyses of the raw data underlying them, then much relevant scientific information would become unavailable for use in setting standards to protect public health and the environment.

In the past, the EPA sought to obtain the original raw data used to support certain epidemiological analysis of in utero exposure to chlorpyrifos and subsequent adverse neurodevelopmental health outcomes in children generated by the Columbia Children's Center for Environmental Health (CCCEH) to support the human health risk assessment of chlorpyrifos. Prior to the 2013 meeting with CCCEH investigators, the EPA thought this data would be important to both clarify the exposure-response relationship observed in the epidemiology study relative to acetylcholinesterase inhibition, and also to resolve uncertainties regarding study participants co-exposure to other environmental contaminants, among other areas of uncertainties. CCCEH researchers did not agree to provide this data; however, the researchers met with the EPA and discussed the agency's questions about the data to help determine whether further review of the raw data might assist the EPA in resolving uncertainties. As a result of this meeting, the EPA concluded that access to the raw data would not provide answers to the EPA's questions. Indeed, based on discussions in that meeting as well as further work conducted by agency staff, the EPA has gained additional information to better clarify and characterize the major areas identified as uncertainties.



## **COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Question:** In committee report language accompanying the Consolidated Appropriations Act, 2016 (H.R. 2029), Congress directed EPA to "collect and analyze information from the commercial insurance and financial industries regarding the use and availability of necessary instruments (including surety bonds, letters of credit, and insurance) for meeting any new financial responsibility requirements and to make that analysis available to the House and Senate Committees on Appropriations and to the general public on the Agency website 90 days prior to a proposed rulemaking." Congress directed EPA to conduct this analysis because of concerns with whether the financial and insurance markets could provide affordable financial assurance instruments to cover the compliance costs associated with new financial responsibility requirements under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Can you please describe the consultation process to date, including number of meetings held in 2015 and in 2016, and describe the consultation process for the rest of the year?

**Answer:** As part of the EPA's ongoing efforts to develop the proposed Hard Rock Mining rule under CERCLA 108(b), the EPA has met with members of the financial community - one meeting in 2015 and three meetings in 2016 to date. A total of 13 industry participants were consulted with over this two year period. Each of these meetings included multiple representatives of particular segments of the financial industry involved in the provision of financial assurance instruments. During discussions with representatives from those sectors, we focused on the agency's current thinking related to the mechanics of the financial responsibility instruments that owners and operators would need to obtain under the rule.

In 2015, the EPA also met with representatives from states, tribes, federal land management agencies, environmental groups, industry groups, and all litigants and intervenors. The EPA conducted several meetings and teleconferences and one general informational webinar that was attended by stakeholders. Going forward in 2016, EPA has at least two additional informational webinars scheduled and will meet with federal land management agencies, other federal agencies, states, tribes, and small entities that may be regulated under the proposed rule.

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Who has the agency consulted with in the commercial insurance and financial industries to conduct this analysis?

**Answer:** As specifically directed, the EPA has been collecting and analyzing information from the commercial insurance and financial industries regarding the use and availability of necessary instruments. We also are considering significant amounts of publically available, attributable information from industry representatives, financial rating and trade associations, and government bodies including the U.S. Department of Treasury and the U.S. Government Accountability Office. We have also met with and sought advice from representatives of the insurance industry, the surety community, and the banking community. The EPA will consider the information provided in those meetings as it seeks to enhance the availability of the instruments.

**BUY AMERICA, ADERHOLT-VISCLOSKY BIPARTISAN LANGUAGE**

**Question:** The last three budgets proposed to remove the Buy America requirement for iron and steel used in EPA drinking water state revolving fund projects. Congress puts it in and you take it out. Can you provide an update on EPA's or community challenges to implement the provision?

**Answer:** The Administration is not opposed to Buy American requirements in the SRFs, but generally deletes legislative riders from prior years in its requested appropriations language for the Budget. The EPA continues to proactively engage and implement the American Iron and Steel requirements for State Revolving Fund programs. The agency provided training, outreach, and education for states, communities, manufacturers, and all stakeholders on the AIS requirements since their inception. While some states and communities have shown concern for the potential burden of implementing the requirements, the provision allows sufficient flexibility for waivers, including public interest waivers, to address situations as they arise.

## WOTUS

**Question:** And if so what were they and how do they help us to clarify the states are primary in jurisdiction over water?

**Answer:** In addition to modifying the proposed rule and reflecting many state concerns in the final Clean Water Rule, the final rule preamble also speaks directly to the role of states and tribes under the Clean Water Act. The preamble acknowledges the vital role states and tribes play in implementation and enforcement of the Clean Water Act, citing Clean Water Act Section 101(b) that "it is the Congressional policy to preserve the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, to plan the development and use of land and water resources, and to consult with the Administrator with respect to the exercise of the Administrator's authority under the CWA." (80 Fed.Reg. 37059 (June 29, 2015)). The preamble continues with a discussion of state and tribal roles under the Clean Water Act. The final Clean Water Rule preamble also notes that nothing in the rule limits or impedes any existing or future state or tribal efforts to further protect their waters.

The EPA and the U.S. Army Corps of Engineers made numerous changes to the proposal in response to comments received from states and others before finalizing the Clean Water Rule. For example, several states and other commenters expressed concerns over the potential for inconsistent application of significant nexus analyses. To address this concern, the final Clean Water Rule provides more detail regarding the definition of significant nexus and lists the specific functions that will be considered in the analysis. The final Clean Water Rule also provides more regulatory certainty by narrowing the scope of waters that can be assessed under a case-specific evaluation as compared to the proposal.

In addition, several states and other commenters suggested the final rule be clearer regarding which ditches would not be considered jurisdictional, and the final Clean Water Rule identifies several categories of ditches that are not waters of the United States, more clearly stating the flow regimes in ditches that are excluded from jurisdiction. States and other commenters also expressed concern that some of the exclusions, such as that for artificial lakes or ponds, required an exclusive use. The final Clean Water Rule removes language regarding "use" of the ponds, including the term "exclusively." The final Clean Water Rule also provides other additional clarifications and exclusions requested by states and other commenters, such as an exclusion for certain stormwater control features and wastewater recycling facilities.

**WOTUS**

**Question:** You told the subcommittee last year that you believe the states are primary in issues related to water and water quality. You said that there were issues you recognized in the rule that caused some concern for the states and you would resolve that in the final rule.

Recognizing the rule is on hold and your agency has honored the stay the courts put on the rule: Can you tell me if you made those changes to this rule?

**Answer:** Yes, the final Clean Water Rule reflects the EPA and the U.S. Army Corps of Engineers responses to concerns expressed by states, as well as by other stakeholders, regarding several issues they identified in the proposed rule. As your question notes, we are not implementing the Clean Water Rule during the stay but instead are using prior regulations defining "Waters of the U.S." when implementing Clean Water Act programs.

**FLINT**

**Question:** Are individuals able to apply for grants or loans to assist with replacement costs?

**Answer:** No, under the DWSRF statute, individuals are not eligible to receive assistance directly from a state DWSRF. The utility serving the impacted homeowners could choose to finance the entire cost of lead service line replacement through a DWSRF agreement. However, state and local laws may further limit eligibility for DWSRF funds. In most cases, a utility would need to obtain consent from the private owner of the property to replace privately-owned lead service lines.

**FLINT**

**Question:** Does the Safe Drinking Water Act allow for funds to be used to fix some of those issues in homes, schools and other private properties?

**Answer:** Yes, removal of lead service lines, including the privately-owned portion of the line, may be funded by a State's Drinking Water State Revolving Fund (DWSRF) so long as the loans are made to an eligible entity and all other requirements of the DWSRF are met. However, state and local laws may further limit eligibility for DWSRF funds. In most cases, a utility would need to obtain consent from the private owner of the property to replace privately-owned lead service lines.

## **FLINT**

**Question:** Generally speaking where does most lead contamination in water systems come from?

**Answer:** The primary contribution of lead and copper to drinking water is corrosion from lead service lines and in-home plumbing materials that contain high levels of lead. This typically occurs when the water has high acidity or low mineral content that corrodes pipes and fixtures.



**FISH CONSUMPTION RATE AND WATER QUALITY STANDARDS ARSENIC IN DRINKING WATER**

**Question:** Despite how conservative and extremely protective the national criteria are, EPA wants Idaho to assume everyone in the state eats 175 grams per day of fish every day (about 6 ounces a day or 30 cans per month) for 70 years so that the resulting criteria would be even more stringent. Idaho instead took the best-science approach and through new research adopted a Fish Consumption Rate of 66.5 grams per day. Do you believe that this rate is not scientifically defensible?

**Answer:** Idaho has not yet submitted its human health criteria to the EPA, and the EPA has not yet reviewed the criteria and associated rationale to determine if they are scientifically defensible and protective of Idaho's uses, consistent with Clean Water Act section 303(c) and the EPA's implementing regulations. The EPA last reviewed and commented on Idaho's proposed human health criteria at the state's December 10, 2015, Board of Environmental Quality meeting. At that meeting, the EPA expressed concern that Idaho's decisions to 1) use a mean fish consumption rate for high consuming populations, 2) to calculate the fish consumption rate based only on current consumption of fish (which does not consider suppression), and 3) to couple that fish consumption rate with an excess cancer risk of 1 in 100,000, will not adequately protect tribes with treaty-protected subsistence fishing rights in the state.

## FISH CONSUMPTION RATE AND WATER QUALITY STANDARDS

**Question:** Does EPA agree that this exposure scenario is extremely conservative (protective) and by percentage, does not accurately describe the vast majority of the U.S. population. If so, why are we doing this at all, and at such a high cost with no appreciable return?

**Answer:** The EPA's approach for developing human health criteria is based on science and policies that have been thoroughly vetted publicly. Human health criteria are designed to minimize the risk of adverse effects occurring to humans from lifetime exposure to substances through the ingestion of drinking water and consumption of fish obtained from surface water. Following the EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), the EPA used a combination of median values, mean values, and percentile estimates for the parameter value defaults to calculate its updated 2015 Ambient Water Quality Criteria. The EPA's assumptions afford an overall level of protection targeted at the high end of the general population (i.e., the target population). This approach helps achieve the EPA's target goal of protecting the majority of the population, and appropriately meets the goals of the Clean Water Act and the 304(a) criteria program.

Additional information can be found in the EPA's Response to Scientific Views from the Public on Draft Updated National Recommended Water Quality Criteria for the Protection of Human Health (<https://www.epa.gov/sites/production/files/2015-10/documents/epa-response-to-public-comments-to-human-health-final-criteria.pdf>).

### **ARSENIC IN DRINKING WATER**

**Question:** Just recently my office has heard from the small town of Filer, Idaho that expressed concern with the economic burden the standards will have on their community and rate payers. Since the rule became enforceable in 2006, the Joint FAO/WHO Expert Committee on Food Additives (JEFCA) has re-evaluated the effects of arsenic on humans. Attached is a letter from the town of Filer I would like to submit for the record. I also have two questions.

In 2012 this committee asked for a report on arsenic that was originally requested in 2005. Is that report available and if it is not available, why?

**Answer:** The agency understands the importance of this issue and is working to finalize the report.

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Has EPA looked at this data and have they taken it into account?

**Answer:** The EPA has reviewed the Joint FAO/WHO Expert Committee on Food Additives (JEFCA) data and has taken the data into consideration.

## STATE OVERSIGHT

**Question:** The tragedy in Flint has emphasized the importance of EPA's role to conduct state oversight and ensure states are appropriately implementing pollution control programs.

How have the significant resource constraints you've been operating under affected your state oversight?

**Answer:** The EPA conducts a range of oversight activities of all authorized state programs. For example, for the Safe Drinking Water Act, these activities include reviewing state compliance monitoring strategies and the completion of grant commitments, holding regular meetings with state enforcers to review violations and enforcement cases, conducting oversight inspections and taking direct enforcement action where appropriate. Over the past decade, more states have received primacy authorization for more environmental programs. Resource constraints have challenged the EPA's ability to maintain the high level of engagement with states necessary to ensure appropriate program implementation. In light of these challenges, the EPA is developing streamlined efficiencies and electronic reporting tools, including reporting under the Clean Water Act, to maintain robust state oversight.

## STATE OVERSIGHT

**Question:** Has the frequency or depth of state audits changed in the past few years since the Agency's workforce, despite your requested increases since FY 2015, is still close to staffing levels in the 1980's? How many Full Time Equivalents (FTE) have worked in state oversight in each of the past 10 years?

**Answer:** The EPA does not have specific program areas in its budget for state oversight, so no specific estimate is available. The EPA undertakes a range of oversight activities (e.g., planning, priority setting, grant performance review) as well as independent action within states (e.g., targeting, inspections and enforcement) that seek to ensure authorized state programs are implemented appropriately across all programs including the Safe Drinking Water Act (SDWA). The EPA uses a nationally consistent and transparent process, the State Review Framework (SRF), to review the three largest: Clean Air Act (CAA) Title V, Clean Water Act (CWA) National Permitting Discharge Elimination Systems (NPDES), and RCRA Subtitle C programs. For several years, resource constraints have significantly challenged the EPA in a variety of areas, including state oversight and enforcement. For example, the frequency of SRF reviews has been reduced from every three years in 2004 to every five years today.

## **E-MANIFEST AND CYBERSECURITY**

**Question:** Despite unprecedented improvements in securing federal information systems, the government has experienced an increasing number of security breaches and attempts to gain unauthorized access to compromise these systems. How will the Agency assure adequate protection of information on hazardous materials collected through the e-manifest program? Does the budget request provide sufficient resources to do so?

**Answer:** Cybersecurity is a significant concern for the agency overall and for e-Manifest. In August 2015, the e-Manifest program hired a dedicated, in-house cybersecurity expert to oversee the cybersecurity requirements associated with the system design, development, and deployment. The focus is to ensure compliance with all currently applicable, requisite cybersecurity policies (i.e. FISMA 200, NIST 800-53, etc.). Additionally, e-Manifest will be subjected to the federal accreditation process and will be granted an Authority to Operate (ATO), only after successful cybersecurity controls implementation, and the successful review, and concurrence from the designated Authorizing Official. Through employing these measures, e-Manifest will provide and maintain a significant cybersecurity posture against known/emerging threats and the current budget request does provide sufficient resources to achieve these goals. The requested funds include resources to address IT security requirements.

## **DECENTRALIZED WASTEWATER TREATMENT SYSTEMS**

**Question:** How is EPA working with communities served by these decentralized systems to ensure health and safety standards are achieved?

**Answer:** The EPA has numerous activities focused on working with communities to ensure health and safety standards are achieved by decentralized systems. Over time, the EPA has invested over \$35 million for wastewater demonstration projects that highlight decentralized technologies, management, and education and training programs in more than 25 states. Similarly, the EPA compiled a compendium of case studies to help community planners, elected officials, health department staff, state officials, and interested citizens explore alternatives for managing their decentralized wastewater treatment systems. In addition, the EPA has developed several documents, such as guidance and technical information, to help communities establish comprehensive septic (onsite) management programs. The EPA also has provided policy and helpful information to support communities and home owners in the management of decentralized systems.



### **DECENTRALIZED WASTEWATER TREATMENT SYSTEMS**

**Question:** How many FTEs at the Office of Water are currently assigned to perform this work and how is this workload divided among them?

**Answer:** The EPA's Headquarters and Regional staff are supporting the program by working on specific issues and events. The EPA typically has between 10 and 12 employees participating in various elements of the decentralized program. In the case of specific events, such as SepticSmart week, additional staff are involved to support planning and communication activities.

## **DECENTRALIZED WASTEWATER TREATMENT SYSTEMS**

**Question:** How is EPA engaging stakeholders at the national and regional levels to ensure decentralized wastewater systems are appropriately managed and not posing a risk to water quality and public health?

**Answer:** In 2005, the EPA formed a Decentralized Memorandum of Understanding (MOU) Partnership with various organizations as a means to promote sustainable decentralized wastewater treatment. The MOU Partnership renewed its commitment in 2014 and has grown to include 19 organizations. The Partnership brings together water sector stakeholders (e.g., the Association of Clean Water Administrators and the Centers for Disease Control and Prevention) for data sharing, education on specific topics and convening of joint partner events. The Partnership focuses on public health, sustainability, drinking and source water, standards and codes, and wastewater operations and maintenance. A complete list of the EPA Decentralized Wastewater MOU Partners and activities is available at <https://www.epa.gov/septic/decentralized-system-partners>

## **GREAT LAKES RESTORATION INITIATIVE AND TRIBES**

**Question:** So could you either tell us now or later how many grants have been awarded to tribes since 2010 when GLRI was launched? And what has been the total amount of funding has been awarded to tribes? And what kind of engagement is EPA doing with tribes to ensure that their grant proposals are competitive?

This also affects another area, and here again I commend Governor Dayton. He proposed legislation to work with tribal nations to secure rights to hunt and gather to support their traditional diet in the Ojibwe culture. So he has heard, I am sure, from tribal leaders as well as I have that they want to make sure that the habitat that they hunt and fish in is not damaged. So can you also tell me how the EPA is working to keep waterways healthy enough to support tribal treaty rights, traditional subsistence foods, and, how aggressively are you making sure that tribal consultation is moving forward, especially in the area of the sulfide mining?

**Answer:** Since 2010, over 820 GLRI projects totaling more than \$305 million are conducted on reservations and ceded territories. This represents more than 28% of the total of 2,930 GLRI projects and over 19% of the approximately \$1.58 billion in GLRI project funding. These amounts include over 300 projects from grants totaling more than \$40 million that have been awarded directly to 31 tribes and Tribal organizations.

The EPA regional grant staff conduct regular training events for Tribal governments to improve their general grant writing, grant management, and grants.gov abilities. For example, in 2015, the EPA grants staff conducted an in person training at Prairie Island Indian Community near Red Wing, Minnesota. The training was a review of grants management requirements and procedures, as well as policy updates. It also provided a good dialogue to strengthen the EPA's partnership with the Tribe. The EPA program staff, including staff from the EPA's Great Lakes National Program Office, join the grants team to present funding opportunities and provide program-specific information. The EPA uses Great Lakes Restoration Initiative (GLRI) resources to consistently provide specialized capacity funding to tribes so that they may fully participate in the GLRI. Tribes are encouraged to use some of the capacity funding to support their grant-writing and management. The EPA also invites tribes to attend the Great Lakes Restoration Initiative applicant webinars where GLNPO staff provide advice and tips for creating a competitive application for funding. All applicants, including tribes, that are not selected for competitive funding opportunities are invited to discuss the strengths and weaknesses of their applications so that they can make applicable changes in future applications.

The EPA recognizes the critical cultural and ecological importance treaty rights provide for tribes. The EPA is committed to honor and respect tribal rights and resources protected by treaties in our actions, as outlined in our December 1, 2014 memorandum commemorating the 30th anniversary of the EPA's Indian Policy. The EPA explicitly recognized the role treaty reserved rights can play in our actions by issuing the EPA Policy on Consultation and

Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights in February 2016. Currently 42 of the more than 300 federally recognized tribes with reservations have completed the process of obtaining the EPA's approval to be treated in a manner similar to a state (TAS) and adopted standards for their waters that the EPA has approved under the Clean Water Act. The EPA has proposed a rule to streamline the application process for TAS for the water quality standards program. The proposal would reduce the burden on applicant tribes and advance cooperative federalism by facilitating Tribal involvement in the protection of reservation water quality. Additionally, it will allow tribes to develop water quality standards, in consultation with the EPA, that are protective of aquatic-dependent resources.

The EPA follows our national Tribal consultation policy issued on May 4, 2011. In order to ensure adherence to this policy, certain EPA Regional offices dealing with mining issues and Tribal consultation sometimes go a step further and develop regional consultation guidance and standard operating procedures for specific programs. Typically, the water quality standards (WQS) program, National Environmental Policy Act (NEPA), National Pollutant Discharge Elimination System (NPDES) and Total Maximum Daily Load (TMDL) programs are involved in Tribal consultations or informational meetings related to sulfide mining as well as iron-ore mining.

In the Region 5 WQS program, any WQS action submitted to the EPA for formal agency approval involves an analysis of whether or not to invite consultation with tribes. Region 5 has routinely consulted with tribes on a variety of state WQS actions including nutrient criteria, human health criteria methodologies, BEACH Act guidance, and WQS variances for mercury, copper and chloride. Invitations to consult are offered to tribes that may be directly downstream of a state WQS action, adjacent to a WQS action, including where an action may have the potential to affect rights in ceded territory of those tribes which have retained hunting, fishing and gathering rights outside their reservations.

In the Region 5 impaired waters list/TMDL program, tribes are invited to consult on certain state impaired waters lists and TMDLs. EPA/tribal discussions have included concerns related to wild rice waters and the potential deleterious impacts of elevated sulfate concentrations.

Specific interactions with tribes involving sulfide mining as well as other mining issues date back to well before the 2011 EPA consultation policy and covers approximately eight mines. Thus far, EPA is aware of concerns related to mercury in fish, methylation of mercury due to increased sulfates, impacts to downstream tribes with EPA-approved WQS and adverse impacts to treaty resources including wild rice and migratory waterfowl. EPA actions have included formal consultation with tribal leaders and representatives, as well as informational meetings with tribal staff. In addition, the Region holds several sets of monthly calls with tribal staff to discuss water program, mining and WQS issues. Tribes in Region 5 are aware that they do not need to wait for a consultation invitation from the various EPA programs, but may request consultation on any EPA action at any time

## **CLEAN POWER PLAN**

**Question:** On February 9, 2016 the U.S. Supreme Court granted five separate motions to stay the CPP. One of these granted motions specifically requested the court to extend "all" compliance dates by the number of days between the rule's publication and a final decision by the courts, including the Supreme Court, relating to the rule's validity.

**Answer:** The ultimate effect of the stay on the Clean Power Plan deadlines will be determined when the stay is lifted. The Court's orders are ambiguous because different applicants requested different relief. The government interpreted the stay applicants' opening briefs as requesting that all CPP deadlines be tolled, and it opposed the stay in part on the grounds that such relief would be extraordinary and unprecedented. In their reply brief, however, the States clarified that they were only seeking a stay that would relieve States of the obligation to comply with CPP deadlines during the litigation and that the stay would not necessarily provide for day-for-day tolling of the deadlines. The Supreme Court's orders granting the stay did not discuss the parties' differing views of whether and how the stay would affect the CPP's compliance deadlines, and they did not expressly resolve that issue. In this context, the question of whether and to what extent tolling is appropriate will need to be resolved once the validity of the Clean Power Plan is finally adjudicated.

### **CLEAN POWER PLAN**

**Question:** Twenty-two states have ceased work on compliance plans as an outgrowth of the Supreme Court stay of the Clean Power Plan. Several others are evaluating whether to continue working on plans. Given that, why is EPA continuing to spend taxpayer dollars in assisting the minority of states that are going forward with plans which are currently not required by law?

**Answer:** Addressing carbon pollution is a part of the EPA's obligations under the Clean Air Act. Further, the Clean Air Act directs the EPA to engage with states and other stakeholders and to provide technical and financial assistance on all aspects of air pollution prevention and control. States may regulate greenhouse gases under their own authorities whether or not the CPP is in effect. Since the stay was issued, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. Thus, we will move forward to support states' voluntary efforts in a way that is consistent with the stay.

### **CLEAN POWER PLAN**

**Question:** Is the EPA still developing programs under the Clean Power Plan such as the Clean Energy Incentive Program during the Supreme Court ordered stay?

**Answer:** The EPA has sent a proposal with details about the optional Clean Energy Incentive Program (CEIP), a component of the Clean Power Plan, to the Office of Management and Budget for interagency review. Many states and tribes have indicated that they plan to move forward voluntarily to work to cut carbon pollution from power plants and have asked the agency to continue providing support and developing tools that may support those efforts, including the CEIP. The agency will be providing such assistance, which is not precluded by the stay.

### CLEAN POWER PLAN

**Question:** How much money will the agency spend this year in implementing the Clean Power Plan in terms of agency manpower; outside consultants and experts; and contracts and grants to non-profits and states?

**Answer:** Addressing carbon pollution is a part of the agency's obligations under the Clean Air Act. The EPA expects to continue to use agency funds to protect human health and the environment consistent with its authorities under the Clean Air Act. For the states that choose to voluntarily continue to work to cut carbon pollution from power plants and seek the agency's guidance and assistance, the EPA will continue to provide tools and support and, as requested, make available expert teams to provide technical assistance to states on particular topics. The EPA also expects to continue to develop electronic systems to support state plan development activities, and other guidance, as appropriate, to support and respond to state needs. Such guidance may include information regarding evaluation, measurement, and verification of energy savings and emissions reductions. The EPA will also be responding to litigation. The agency does not budget to the specific activities included in the question.



## OZONE

**Question:** EPA projects that by 2025 nearly the entire country will achieve the 2015 ozone standard through already existing measures, including the 2008 ozone standard. If the nation is already making significant reductions to ozone levels, why not just give states more time to finish work on the previous standard rather than forcing a new one on them?

**Answer:** The Clean Air Act governs the process and timing for initial area designations and associated compliance deadlines after the EPA establishes a new or revised NAAQS. Following Clean Air Act requirements, the EPA anticipates the following schedule for the 2015 ozone NAAQS:

- By October 2017: The EPA issues final area designations; those designations likely would be based on 2014-2016 air quality data. If preconstruction permitting program requirements for the nonattainment area do not already exist, federal permitting regulations apply until they are replaced by state-adopted programs.
- 2019: States submit area-specific inventories of ozone-producing emissions.
- 2020 to 2021: For nonattainment areas classified as "Moderate" and above, states, and any tribes that choose to do so, complete development of implementation plans, outlining how they will reduce pollution to meet the standards. State and tribal plans can include federal measures, and any local or statewide measures needed to demonstrate that a nonattainment area will meet the standards by its attainment date.
- 2020 to 2037: Nonattainment areas are required to meet the primary (health) standard, with deadlines depending on the severity of an area's ozone problem.

A delay in implementation of the 2015 health-based ozone standard would jeopardize progress toward cleaner air and delay health protections for millions of Americans, including children, older adults, and people with asthma. For ozone, the EPA estimates that meeting the 70 ppb standard will yield health benefits valued at \$2.9 billion to \$5.9 billion annually in 2025 nationwide, not counting the health benefits that will be achieved in later years in California. These benefits include the value of avoiding 320 to 660 premature deaths, 230,000 asthma attacks in children and 160,000 days when kids miss school. Delaying the designations process would also deny citizens in potential nonattainment areas the information they need about air quality to protect their families from ozone exposure.

Planning and implementation work to meet the 2015 ozone standard will build on progress states already have made to plan for and meet the 2008 standards. The overall framework and policy approach reflected in the implementing regulations for the 2008 ozone standards provide an effective and appropriate template for the general approach states would follow in planning for

attainment of the revised ozone NAAQS. In particular, for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to continue helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards.

## OZONE

**Question:** EPA delayed work on the 2008 ozone standard for two years while it pursued, and then abandoned, reconsidering that standard. After waiting on EPA, states are just now starting new emissions reductions under the 2008 ozone standard. Doesn't it make sense to give states time to implement the 2008 standard before advancing yet another standard on them?

**Answer:** Planning and implementation work to meet the 2015 ozone standard will build on progress states already have made to plan for and meet the 2008 standards. The overall framework and policy approach reflected in the implementing regulations for the 2008 ozone standards provide an effective and appropriate template for the general approach states would follow in planning for attainment of the revised ozone NAAQS. In particular, for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to continue helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards.

## OZONE

**Question:** Several states warned that imposing a new ozone standard would unnecessarily burden state agencies already working on the 2008 ozone standard. On top of the many other new EPA regulations that states are currently implementing, why is EPA making states waste valuable administrative resources to implement two ozone standard schedules at the same time?

**Answer:** The EPA and state co-regulators share a long history of managing ozone air quality under the Clean Air Act (CAA), underpinned by previously issued EPA rules and guidance. The overall framework and policy approach reflected in the implementing regulations for the 2008 ozone standards provide an effective and appropriate template for the general approach states would follow in planning for attainment of the 2015 ozone NAAQS. Planning and implementation work to meet the 2015 ozone standard will build on progress states already have made to plan for and meet the 2008 standards. In particular for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards. Following past precedent, the EPA intends to propose revoking the 2008 standards and provide transition rules intended to help avoid any potential inefficiencies as states begin implementing the Clean Air Act's requirements for the 2015 standards.

## OZONE

**Question:** The 2015 ozone standard immediately applies to PSD permits that businesses need to grow and create jobs. That means businesses will have to immediately show their projects meet the 2015 ozone standard, something hard to do in an area that already fails it. What PSD permit relief will EPA provide for new nonattainment areas in this situation?

**Answer:** After an area is designated non-attainment for ozone and the designation becomes effective, the PSD permit requirements will not apply to ozone in that area. Instead, the nonattainment NSR permitting requirement will apply to ozone. In accordance with statutory requirements for that program, preconstruction permits may be obtained under that program if the applicant offsets its increase in emissions of ozone precursors. Prior to the effective date of a nonattainment designation, ozone will remain subject to the PSD requirements. During this period, a source may obtain a PSD permit by demonstrating that any increase in ozone precursors does not cause or contribute to a violation of the ozone standards, or by obtaining sufficient offsetting emissions to compensate for any adverse ambient impact anywhere the source would cause or contribute to a violation. The EPA proposed a comprehensive update to the Guideline on Air Quality Models in Appendix W of 40 CFR part 51 (80 FR 45340, July 29, 2015). The agency intends to finalize the proposed rule in summer 2016. At the same time, the EPA plans to issue guidance providing PSD compliance demonstration tools to streamline the required demonstration that the proposed source will not cause or contribute to a violation of the ozone NAAQS. In addition, the final ozone NAAQS rule contained a grandfathering provision to address certain pending permit applications received prior to the effective date of the new or revised NAAQS. The grandfathering provision allows such applications to be subject to the prior applicable NAAQS and not the 2015 Ozone NAAQS.

## OZONE

**Question:** Legislation has been introduced to revise the 2015 ozone standard's implementation schedule to provide states time to complete work on the 2008 ozone standard. Isn't this a common-sense approach to continuing air quality improvements without unnecessarily draining administrative and economic resources?

**Answer:** Although the Administration does not have an official position on this bill, the EPA views delay as unnecessary and harmful to public health and the environment. Delaying the implementation schedule for the 2015 ozone standard would jeopardize progress toward cleaner air and delay health protections for millions of Americans, including children, older adults, and people with asthma. For ozone, the EPA estimates that meeting the 70 ppb standard will yield health benefits valued at \$2.9 billion to \$5.9 billion annually in 2025 nationwide, not counting the health benefits that will be achieved in later years in California. These benefits include the value of avoiding 320 to 660 premature deaths, 230,000 asthma attacks in children and 160,000 days when kids miss school. Delaying the designations process would also deny citizens in potential nonattainment areas the information they need about air quality to protect their families from ozone exposure. Forty-five years of clean air regulation have shown that a strong economy and strong environmental and public health protection go hand-in-hand. The EPA is committed to ensuring that success will continue. In addition, when designing their state implementation plans, state and local officials have the authority to consider economic factors as part of their implementation strategies to attain the NAAQS.

### **GREAT LAKES RESTORATION INITIATIVE**

**Question:** Since it was started in 2010, three areas of concern have been delisted, one of them being the Ashtabula River in my district, which is a wonderful thing. As your people were out there, as though it was on cue, an eagle flew. The press was there and all. But which areas of concern will have to postpone restoration sites, if you are going to cut this by \$50 million?

**Answer:** Great progress has been made in cleaning up Areas of Concern. Since the start of the Great Lakes Restoration Initiative, the Presque Isle Bay (PA), Deer Lake (MI), and White Lake (MI) Areas of Concern have been delisted and the remediation and restoration actions necessary for delisting were completed at an additional four Areas of Concern, including Ashtabula River (OH), Sheboygan River (WI), St. Clair River (MI), and Waukegan Harbor (IL). These Areas of Concern will be delisted once all of their beneficial use impairments have been removed. Because the EPA has prioritized Area of Concern restoration, the EPA does not expect that restoration at any Areas of Concern will have to be postponed in the near term.

**“HOUSEHOLD ACTION LEVEL” FOR LEAD**

**Question:** EPA committed over a year ago to developing a health-based "Household Action Level" for lead. This level will help parents, pediatricians, and local health officials understand the risk to a formula-fed infant so they can act to protect the child. These infants are most vulnerable to lead in drinking water.

Why hasn't EPA released this value?

**Answer:** The EPA received the recommendation from the National Drinking Water Advisory Council (NDWAC) in December 2015 and is working on health-based modeling of lead in drinking water. The EPA is analyzing data on lead exposure, blood lead level models and exposure pathways.



**“HOUSEHOLD ACTION LEVEL” FOR LEAD**

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When will you release it?

**Answer:** The public will have the opportunity to review the draft Household Action Level when it is submitted for independent external peer review later this year.

## LEAD RENOVATION, REPAIR AND PAINTING RULE

**Question:** In last year's appropriations cycle, there was a rider, and I offered an amendment to strike the rider that would have prohibited the EPA from implementing the Lead Renovation, Repair and Painting Rule. While, frankly, my amendment did not pass in this committee, the ranking member and I were able to remove it from the final omnibus spending bill. I do not think I have any time, but at some point, you can let us know, had that rider been implemented, how it would have weakened EPA's tools for protecting children from lead exposure. It would be very helpful if you can respond to that in writing, so I can graciously thank the chairman for your time. If the rider to the Lead Renovation, Repair and Painting Rule had been implemented, how would it have weakened the EPA's tools for protecting children from lead exposure?

**Answer:** The text of the rider prohibits the use of any funds to implement the lead Renovation, Repair and Painting (RRP) rule until the agency publicly recognizes a commercially available lead test kit that meets both criteria under 40 CFR 745.88(c) (i.e., a test kit currently available that would meet the positive criterion as well as the negative criterion).

EPA recognizes three lead test kits that meet the false negative criterion of the rule. As clearly stated in 40 CFR 745.88(a), these kits can be used unless and until industry develops a test kit that also meets the false positive criterion. Furthermore, the RRP rule does not require the use of lead test kits. They are optional on the part of the renovator.

A funding cutoff would prevent EPA from carrying out its ongoing statutory mandate under TSCA Title IV to develop and implement a program to ensure that renovation, repair and painting activities are conducted in a lead-safe manner. It is unnecessary to risk these adverse consequences. A list of specific impacts is provided below.

### Programmatic Impacts

- **Firm Certification Would Stop** – No new renovation firms will be certified, applications that have been submitted will not be issued, and overpayment refunds will not be issued.
- **Renovators Forced Out of Compliance** – Renovators will be unable to obtain Cleaning Verification Cards that are required to be used by every certified renovator.
- **Accreditation of New Training Providers Would Stop** – No new Training Providers will be accredited nor will Training Providers be able to expand their training programs – both of which will impede the training of new renovators. In addition, training providers have begun to apply for re-accreditation because their original accreditation expires four years after being granted; these providers will be forced to discontinue their business because re-accreditations will not be approved. The EPA will also be unable to keep training materials current.

- Authorization of New State Programs Would Stop – The EPA has authorized 14 states and one tribe to administer and enforce the RRP rule in lieu of the federal program. Without implementation funding, the agency will not be able to authorize additional programs.
- Critical Funding for State Programs Would Stop – Authorized state programs receive grant funds from EPA. Without funding these states may be forced to cease operations and return the program to EPA, putting jobs at risk and requiring thousands of renovators to comply with the Federal regulation instead of their own state's tailored program.
- Building Demand for Certified Renovators and Firms Would Stop – EPA would stop providing up-to-date information on RRP to the public, such as the search tool for locating certified renovation firms.

#### Health/Environmental Impacts:

- Environmental Health Goals Will Not Be Met – Key health and environmental goals of the program will not be achieved, including reducing the number and percentage of young children with unsafe levels of lead in their blood and reducing the disproportionate incidence of lead-based paint exposure among low-income children.
- Potential Exposure to Dangerous Lead Dust – The number of renovations performed without using lead-safe work practices would increase, compromising public health. Evidence clearly shows that renovations performed *without* using common sense lead-safe work practices can result in exposure to dangerous levels of lead dust; an estimated 1.64 million children in homes, schools and child-care facilities covered by the RRP rule may be affected.

#### Economic/Employment Impacts:

- Homeowners' Choice Diminished – With no new renovation firms being certified, homeowners will be less likely to find a trained and certified renovator, limiting their choice of renovators. With a limited number of certified firms, the cost of lead-safe renovations may increase.
- Trained Renovators Face Unfair Competition, Regulatory Uncertainty – With EPA unable to enforce the Lead RRP program, the more than 93,000 certified renovation firms will be placed at a competitive disadvantage. Without an ongoing enforcement program, non-compliant contractors will be free to undercut legitimate contractors while potentially exposing their customers to dangerous levels of lead in dust. This language would be a disservice to the legitimate firms and the more than 500,000 individual renovators who have followed the requirements of the law to become trained and certified to advantage the few who have not. In addition, the RRP rule will continue to remain in effect, causing widespread confusion that would likely result from news that EPA is unable to enforce the rule.

- **State Employees Impacted** – Without critical grant funding, authorized state programs will feel an impact. All of the 14 authorized state programs have one or more positions funded by EPA grants. Without continued grant funding, these positions are at risk of being eliminated, and the states will face the difficult choice of abandoning their programs or administering them at a greatly reduced level.
- **Private Businesses Stop or Lose Work** – Without enforcement of the RRP program, compliant, certified contractors would likely lose work to non-certified firms, operating illegally but without facing the threat of enforcement. Firms that need proof of certification in order to apply for certain federal or state contracts would lose the ability to bid for jobs unless they are already certified. The overall impact would disproportionately affect small businesses, because they make up the majority of entities in these fields.
- **Government Contractors Stop Work** – EPA uses government contractors and grantees to perform many of the administrative functions associated with implementing the RRP program. EPA will no longer pay for these contractor or grantee services.

## **EPA'S INTERIM RECOMMENDATION OF SPECIFICATIONS, STANDARDS AND ECOLABELS FOR THE LUMBER/WOOD**

**Question:** Wood is a cost-effective, energy efficient, renewable and sustainable solution for building construction. I am pleased that the EPA recognized the value and sustainability of certified wood products in its "Interim Recommendations on Specifications, Standards and Ecolabels to Use in Federal Procurement" published on September 25, 2015. Unfortunately these recommendations only recognize the Forest Stewardship Council (FSC) certification for wood and lumber procurement and overlook the Sustainable Forestry Initiative (SFI) and American Tree Farm System (ATFS) certifications which collectively represent 70% of all certified forests in the US. I understand Dept. of Energy criteria were used to make this recommendation. How do these criteria differ from those used by the USDA for its BioPreferred program?

**Answer:** The EPA's Interim Recommendation of Specifications, Standards and Ecolabels for the lumber/wood category are based on the Department of Energy's (DOE) GreenBuy program Fiscal Year FY2016 priority products list. The DOE GreenBuy Program and USDA's BioPreferred program operate under different policy contexts. DOE's GreenBuy program aims to take a leadership approach in addressing multiple sustainability impacts over the life of products purchased by DOE facilities, and has identified toxic chemical reduction as a key priority area. The USDA BioPreferred program is more inclusive in recognizing responsible wood sources based on its purpose of spurring the purchase of products derived from plants and other renewable agricultural, marine and forestry materials as an alternative to conventional petroleum derived products. The USDA Biopreferred program does not address the multiple environmental and sustainability considerations of the DOE GreenBuy program.

We received the congressional letter sent to Administrator Gina McCarthy dated March 2, 2016 that expresses concerns with the interim recommendations. The Assistant Administrator for the Office of Chemical Safety and Pollution Prevention is sending a letter in response to this inquiry and you should receive it soon. We will keep you informed as this work progresses, and we appreciate your input.

**SFI AND ATFS**

**Question:** Why were the SFI and ATFS certifications not included in the interim recommendations?

**Answer:**

Sustainable Forestry Initiative (SFI) and American Tree Farm System (ATFS) were not included in DOE's FY 2016 priority products list based on their analyses of the sector. As a result of your inquiry and others that we have received, the EPA has met and continues to work with the U.S. Department of Agriculture's Natural Resources and Environment and the DOE's Office of Sustainable Environmental Stewardship to gain further information.

## LUMBER RECOMMENDATIONS

**Question:** Is the EPA going to revisit its lumber recommendations and specifically reconsider whether the SFI, ATFS and other PEFC-endorsed certifications should be included in the final recommendations?

**Answer:** The EPA is currently engaged in a pilot process that includes a specific request for environmental standard and ecolabel organizations to volunteer their standards for assessment against the pilot criteria for potential EPA recommendations to federal purchasers. Stakeholders and experts have been engaged in developing evaluation criteria which will be used to assess existing environmental standards and ecolabels against draft guidelines. On April 25<sup>th</sup>, via the Federal Register notice found at <https://federalregister.gov/a/2016-09519>, the EPA publicly requested standard development organizations and ecolabel programs to volunteer for assessment against the pilot criteria for potential EPA recommendations to federal purchasers. The EPA strongly encourages SFI, ATFS, other PEFC-endorsed, and any other relevant environmental standard or ecolabel development organizations to submit their standards for assessment using the stakeholder developed criteria.

In addition, we are working with our federal colleagues, including DOE and USDA to gain further information. The EPA's Standards Executive will reach out to SFI, ATFS and the other forestry labels that stakeholders have requested EPA consider. The agency will be in touch with these groups regarding the agency's review of forestry labels and their alignment with the National Technology Transfer and Advancement Act, Office of Management and Budget Circular A119, and related federal policies that guide the EPA's use of voluntary consensus standards and private sector conformity assessment activities.

Stakeholder and expert input, including input from the lumber/wood sector, received during the pilot as well as input from our federal colleagues will inform the EPA's further refinement and finalization of these guidelines and recommendations.

We recognize the congressional letter sent to Administrator Gina McCarthy dated March 2, 2016, that concerns with the interim recommendations. The Assistant Administrator for the EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) is sending a letter in response in response to this inquiry and you should receive it soon. We will keep you informed as this work progresses, and we appreciate your input.

## **BUY AMERICA – EPA'S INTERPRETATION AFFECTING US JOBS IN CALIFORNIA**

### **Question:** Buy America EPA's Interpretation Affecting U.S. Jobs in California

For EPA water infrastructure projects, the "American Iron and Steel" provision in the Interior appropriations bill requires that all steel be "produced in the United States." EPA has interpreted this language to require that all steel manufacturing processes, including "melting," occur in the U.S. This interpretation excludes all steel sheet and plate mills in the western U.S. and their downstream manufacturing customers from participating in SRF and WIFIA projects. Steel slabs – a partially manufactured item under EPA's interpretation, yet the raw material of production for western U.S. slab converter mills – are rarely available for purchase domestically. These U.S. slab converter mills have no choice but to import slabs to begin their steel production and EPA's interpretation is impacting California manufacturers.

Last month a mill near my district had to turn down an order for 8,000 tons of pipe, which will have to be filled by one of its competitors. Meanwhile if the substantial transformation criteria were applied under the definition of "produced in the United States" then more US jobs would be supported. Communities continue to highlight significant challenges with respect to implementation of the current Buy America provisions.

**Question:** In EPA's estimation would a program that allows for substantial transformation afford communities with greater flexibility and ease of implementation?

**Answer:** The EPA is implementing the American Iron and Steel requirement using the existing definition of iron and steel production used in the Federal Acquisition Regulations and historical precedent set by similar requirements (for example, Federal Highway Administration's Buy American requirements). This definition of iron and steel production requires that all manufacturing processes, except coating, must take place in the United States. The EPA applied the same definition of iron and steel production during implementation of the Recovery Act.



### EPA BUDGET AND PERSONNEL

**Question:** EPA's budget documents show actual personnel levels of 14,725 staff in 2015. This is 275 FTE below the 15,000 ceiling authorized by Congress. With the average estimated cost of roughly \$150,000 per FTE, then that amounts to approximately \$41 million of unused payroll.

How is the unused payroll repurposed if not spent on those intended activities, and which programs had the highest unused payroll in fiscal year 2015?

**Answer:** The EPA remains committed to fully utilizing our FTE ceiling to accomplish the mission of the agency. Where unanticipated attrition and slower than expected hiring left positions vacant in FY 2015, unused pay was typically applied to meet non-pay needs of the intended program area. In a small subset, resources supported critical funding gaps in other priority areas: Chemical Facility Safety, the Water Infrastructure Resiliency Finance Center, the Environmental Finance Centers, and modernizing agency processes through ongoing E-Enterprise projects. Funds also supported space consolidation activities at the Potomac Yard and Federal Triangle facilities and will yield significant long-term rent and operations and maintenance cost avoidance for the agency. All reprogrammings were within the Congressional reprogramming thresholds and reported to the Committee.

The relative size of the programs is important when looking at the impact of attrition and slow hiring. We've used a threshold of 25 FTE or greater to identify programs with the highest unused payroll in FY 2015. These also tended to be larger value programs where staff pay comprises a significant portion of total program budget. Program projects with a shortfall of 25 FTE or greater against FY 2015 Operating Plan levels include Civil Enforcement, Compliance Monitoring, RCRA Waste Management, Surface Water Protection, EPM Facilities Infrastructure & Operations, Research—Chemical Safety & Sustainability, OIG Audits Evaluations & Investigations, and Superfund Remedial. These FTE shortfalls have challenged the agency's ability to carry out critical activities. The EPA is fully engaged in restoring FTE to levels authorized by Congress.

## **RADON**

**Question:** Approximately 21,000 people per year die of non-smoking related lung cancer that is directly attributable to radon exposure. For five consecutive years the President's budget proposes to eliminate funding. If budgets are a reflection of priorities, why is reducing radon related deaths not a higher priority for the Administration?

**Answer:** Reducing radon related deaths continues to be a priority for the EPA and the Administration. In FY 2017, the EPA will continue to focus on reducing radon risk in homes and schools using partnerships with outside stakeholders. The EPA successfully led the Federal Radon Action Plan partnership with other federal agencies and recently expanded this effort in collaboration with non-profit and private sector groups under the National Radon Action Plan. For over 25 years, the EPA has provided federal funding to states and technical support to transfer best practices among states that promote effective program implementation across the nation. The EPA will continue to support states and other interested parties with technical assistance and participate in building codes and standards development, disseminate information, and utilize social marketing techniques to inform the public about the lung cancer risk from radon as resources allow.

## **RADON**

**Question:** Has EPA identified possible solutions to lower the number of radon related deaths? What would be required to reduce that number by half in 5 or 10 years?

**Answer:** Approximately 1,100[1] lives are saved annually by radon mitigation that has taken place to date. In FY 2017, the EPA will continue to partner with the private sector, public health groups, and other Federal agencies, to implement the National Radon Action Plan launched together earlier this fiscal year. The Plan outlines a framework for reducing radon risk and sets an ambitious goal of reducing radon in 5 million homes and saving 3,200 lives annually by 2020. This framework for action is aimed at incorporating radon testing, radon mitigation and radon-resistant construction into systems that govern purchasing, financing, constructing and renovating homes, schools, and other buildings. This framework builds on earlier federal action (under the Federal Radon Action Plan) that generated new progress by driving radon action, testing for and mitigating high radon levels, and radon-resistant new construction and also increased radon risk awareness.

[1] EPA National Residential Radon Survey (NRRS); Summary Report (EPA 402-R-92-011, October 1992)

Technical Support Document for the 1992 Citizen's Guide to Radon (EPA 400-R-92-011, May 1992)

EPA Assessment of Risks from Radon in Homes (EPA 402-R-03-003, June 2003/Revised February 2004)

Citations:

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**WATERS OF THE UNITED STATES / "NAVIGABLE WATERS"**

**Question:** In December 2015, the GAO determined that EPA had violated the law by expending funds on a social media campaign to promote the Waters of the United States Rule, or the Clean Water Rule as the Administration has attempted to redefine it. You have repeatedly stated that you don't believe you did anything wrong. Nevertheless, the decision is not yours.

When will the Agency transmit a notice of an Anti-Deficiency Act violation as required under law?

**Answer:** The agency transmitted a draft Anti-Deficiency Act report to the Office of Management and Budget (OMB) for coordination pursuant to the process described in OMB Circular A-11. The EPA will finalize the report after OMB provides its comments on the draft report.

**WATERS OF THE UNITED STATES / "NAVIGABLE WATERS"**

**Question:** The Small Business Administration recommended that EPA withdraw the proposed rule and conduct a panel prior to re-proposing the rule. With a stay on the rule, EPA still has an opportunity to do this.

Will EPA use this as an opportunity to convene a Small Business panel to discuss the impacts of the rule?

**Answer:** The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), mandates application of certain analytic and procedural requirements, including the convening of a Small Business Advocacy panel, as part of an agency's regulatory development process unless the head of an agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Under SBREFA, the impact of concern is any significant adverse economic impact on small entities. The Clean Water Rule as finalized reduces the scope of jurisdiction compared to the rule it replaces. Because fewer waters will be subject to the Clean Water Act under the rule than under the existing regulations, this action will not affect small entities to a greater degree than the existing regulations. As a consequence, this action will not have a significant adverse economic impact on a substantial number of small entities, and therefore a panel was not required. In addition, the rule does not subject any entities of any size to new regulatory requirements or specific regulatory burden. Rather, it is a definitional rule that imposes no direct costs.

Nevertheless, the EPA and the Army Corps voluntarily sought input from representatives of small entities while developing the Clean Water Rule, which enabled the agencies to hear directly from small business representatives. A report summarizing our small entity outreach, the results of this outreach, and how those results informed the development of this rule is available in the docket (Final Summary of the Discretionary Small Entity Outreach for the Revised Definition of Waters of the United States; Docket Id. No. EPA-HQ-OW-2011-0880-1927).

## SUPERFUND NEEDS

**Question:** The 2017 budget proposes \$1.13 billion for the Superfund program, a \$35 million increase over the FY16 enacted level. This includes a \$30 million increase "to accelerate the pace of cleanups" in the long-term, remedial program. With 1,323 sites on the National Priority List, accelerating the pace of Superfund cleanups is a shared goal.

Does EPA have estimates for what is required to cleanup all of the Superfund sites currently on the National Priority List?

**Answer:** Remedial activities at Superfund National Priorities List (NPL) sites are funded with annually appropriated funds out of the Superfund: Remedial program project where special account funding from settlements with responsible parties is not available and responsible parties are not directly cleaning up the site. Approximately 60 percent of NPL sites are cleaned up by potentially responsible parties (PRPs) and PRPs are not required to report their expenditures to the EPA. For those PRPs who self-report their spending, we do have some cost estimates. For example, General Electric has reported that it spent more than \$1.5 billion to clean up the Hudson River Superfund site's contaminated sediments.

For fund-financed sites, the EPA requests \$521 million for this program in FY 2017, which is an increase of \$20 million over FY 2016 enacted levels. The EPA's current estimate for fund-financed sites, is that a typical NPL site cleanup costs around \$15 million to cleanup; however, many of the remaining sites are likely to cost more. For example, the record of decision recently issued for the Passaic River site estimated \$1.4 billion in cleanup costs. While some of these costs are expected to be incurred by PRPs the exact costs to complete construction at large sites like these are difficult to calculate.

Although we do not have a definitive cost estimate for the cleanup of all sites on the NPL, through site management plans, the EPA has determined that there are at least 20 unfunded construction projects that will be added to the already existing queue of on-going construction projects to be funded in FY 2017. The total cost for these new remedial action projects is estimated to be almost \$500 million. This adds to the on-going construction portfolio of over \$200 million annually. These costs range from approximately \$1.5 million at Alabama Plating Company, Inc. to approximately \$110 million at Velsicol Chemical, Michigan.

In 2010, the Government Accountability Office (GAO) analyzed responses to a survey of the EPA regional officials and estimated that, as of September 30, 2009, the cost to conduct remedial construction at non-federal NPL sites in 2015 and beyond was \$3.036 billion. (GAO Report 10-380, p.20 – May 2010). Since that time, we have added another 99 sites to the NPL and will incur additional significant costs for these sites

### **SUPERFUND SPECIAL ACCOUNTS**

**Question:** EPA has roughly \$3.4 billion in settlement agreements that reside in Special Accounts for the cleanup of Superfund sites. That's roughly three times the budget request for the program, and it's a balance that continues to grow.

What assistance is required to accelerate the use of these funds to make progress cleaning up some of the most toxic sites?

**Answer:**

Special account funds are used before annually appropriated funds for response actions at sites identified in the terms of the settlement agreements. The EPA's Special Accounts Senior Management Committee comprises of agency senior managers responsible for the management and use of special accounts. The committee continues to monitor the use of special account funds to ensure we are conducting cleanups and using the funds as quickly and efficiently as possible to address Superfund sites.

Funds retained in special accounts must be used site specifically, and are not available for use at sites outside the scope of the settlement agreement. As of the end of FY 2015, the EPA has spent more than \$3.3 billion of special account funds for response actions at specific sites. Over the past 6 years alone, we have spent more than \$1.7 billion from special accounts, more than double the amount spent cumulatively from special accounts as of the end of FY 2009.

The EPA has multi-year plans to spend the approximately \$3.45 billion remaining in special account funding for site-specific response actions. However, work at Superfund sites often takes several years to complete. It's important to note that in some instances when special accounts funds are received, work may not be immediately initiated due to other circumstances, including the specific requirements for fund use as set forth in the negotiated settlement agreement, the stage of site cleanup, the stage of enforcement actions, and the nature of the site contamination.

Additionally, our successful enforcement efforts to recover costs from potentially responsible parties adds to the total amount of outstanding deposits in special accounts for future response costs. Special accounts are crucial to the EPA's ability to continue to fund construction projects at sites across the country and saves appropriated dollars for those sites where no viable or cooperating responsible party has been identified.

### **BLUON – SNAP PROGRAM APPROVAL**

**Question:** **Question:** A California company, Bluon, has had an application before your Agency for more than a year for approval from the SNAP program for an economic and cleaner drop-in refrigerant and coolant product. They have been waiting for the issuance of a Completion Letter for the refrigeration application of Bluon TdX 20, and Final Acceptability Determination for the HVAC application. Can you please update me on when Bluon can expect a response from your Agency?

**Answer:** The EPA works to review submissions of alternatives as expeditiously as possible. The EPA responded to Bluon's Significant New Alternatives Policy (SNAP) submissions and issued a letter confirming that the application for TdX20 to be used as a retrofit refrigerant in residential and light commercial air conditioning systems is complete. The agency continues to evaluate their additional submissions with respect to other refrigeration end-uses, and will continue outreach with them as we work to complete the review.



**GOLD KING MINE/COLORADO MINE SPILL – REIMBURSEMENT OF TRIBES**

**Question:** Last summer, the Gold King Mine spill sent millions of toxic gallons of water into the Animus River. This affected many residents out West including the Navajo Nation. Recently EPA announced it would provide the Navajo Nation with \$150,000 in cost reimbursement. This is a very small fraction of documented costs.

Is this just the first step in the reimbursement process? Can the Navajo expect more to come?

**Answer:** The Navajo Nation accepted the award for \$157,756 on April 13, 2016. We are continuing to work with the Navajo Nation and discuss additional requests for cost reimbursement. The EPA needs additional information about the requested costs that were not included in this award to determine whether these costs are eligible under the EPA's response authorities and allowable under federal grant cost principles.

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What funds in your budget will be used to finance the repayment? Which accounts would you use? Water? Superfund?

**Answer:** The cooperative agreement with the Navajo Nation for \$157,756 is being funded out of the Hazardous Substance Superfund account and comes from funds that are budgeted to respond to the release of hazardous materials to address environmental and public health risks.

## TREATMENT OF VETERANS – TRAINING FOR MANAGEMENT

**Question:** Over the past year, there have been reports of personnel and management issues at the Agency extended Administrative leave, false CIA agents, and employee misuse of internet sites. While the Administration's goals for hiring of Veterans has been laudable, perhaps more could be accomplished. Some of these Veterans once hired require some additional attention and there are concerns that a level of sensitivity is not being shown in the workplace.

What sort of training is provided for EPA managers, and staff, to prepare them to understand and address the special needs of veterans?

**Answer:** The U.S. Environmental Protection Agency remains committed to the hiring of veterans and ensuring they are successful in the workplace. We provide a number of training and other programs that are designed to integrate veterans into the EPA workforce and ensure their retention. Recently we sponsored a training session for our hiring managers entitled, "Veteran Mental Health in the Workplace: What should you know and what can you do to help?" by Dr. Wendy Tenhula, Department of Veteran Affairs. This session was meant to help hiring managers support veterans who may be experiencing long-term effects of active duty and combat. The session sensitized managers to the special needs of veterans retuning from combat and provided managers with information on tools that are available to support employees.

All newly hired or appointed EPA supervisors and managers are required to complete a mandatory development program known as the Successful Leader's Program (SLP) within their first year in their new position. Included in the SLP is a full day of instruction and exercises pertaining to the topic of human resources which addresses special hiring authorities. Through this program, supervisors are provided information pertaining to the hiring and special needs of our nations veterans.

The EPA also sponsors programs to make employees aware and appreciative of the contributions of the EPA's veteran employees. Each year the Veterans Employment Program hosts a Veterans Day Celebration that acknowledges the accomplishments of our veterans. We educate our agency workforce on the great sacrifices made by veterans through our keynote speakers and special guests. These speakers have included, Congresswoman Tammy Duckworth, Admiral Michelle Howard, Judge Robert Rigsby, and Jaspen Boothe. The EPA's YouTube channel features a number of videos that feature the important work of some of our veteran employees. These videos were designed to educate EPA employees on the contributions veterans are making to EPA's work.

[https://www.youtube.com/results?search\\_query=environmental+protection+agency%2C+veterans](https://www.youtube.com/results?search_query=environmental+protection+agency%2C+veterans)

<https://www.youtube.com/watch?v=le2OyGC1wrk>

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Describe the steps taken by the Agency to ensure the success of veterans once they have been hired with emphasis on the specific programs or activities designed to address the unique physical and psychological needs of veterans due to their service as war fighters.

**Answer:** Approximately five years ago, the EPA established the "Vet2Vet" mentoring program. This voluntary program provides mentors for veterans to assist them as they become accustomed to their new EPA work environment and with the transition from military to civilian culture. The Veterans Employment Program Manager works with each participant to ensure a positive partnership that will benefit all involved. Participants complete a short questionnaire and a veteran employee who has successfully made the transition is identified to serve as a mentor to the newly-hired veteran. Program participants mutually determine the amount of time they spend together. Feedback from program participants indicates it has been valuable to both the mentees and the mentors involved.

Finally, the EPA's Veterans Employment Program Manager is always readily available to assist any of our veterans or their supervisors on issues they may be experiencing in the workplace. This includes working with supervisors on recommending assistive technology equipment needs, establishing mentor/mentee relationships, training, crisis resources, and Veterans Affairs contacts.

## **HARDROCK MINING FINANCIAL ASSURANCE**

**Question:** EPA states in the "CERCLA Section 108(b) Hardrock Mining Rule Structure Overview" filed with the D.C. Circuit on August 31, 2015: "To determine the amount of financial assurance responsibility required for response costs, the Agency is developing a model that would identify an amount of financial responsibility to reflect the primary site conditions that may result in future costs. The model would assign values for a facility based on facility and unit characteristics (e.g., open pits, waste rock, tailings, heap leach, process ponds, water management, and operations, maintenance, and monitoring). These values would correspond to calculated cost levels, and in turn be aggregated to form the basis for the financial responsibility amount."

Has the agency shared a draft of the model, or at minimum elements of the model, with the financial and insurance sectors?

**Answer:** The cost formula is currently under development. We have not shared a draft of the formula with the financial and insurance sectors. During discussions with representatives from those sectors, we focused on the agency's current thinking related to the mechanics of the financial responsibility instruments that owners and operators would need to obtain under the rule.

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If not, please provide a detailed explanation of why such materials were not shared. Please also identify and provide the agency's materials that were shared with these sectors to assess the availability of necessary instruments. *(Follow-up to: Has the agency shared a draft of the model, or at minimum elements of the model, with the financial and insurance sectors?)*

**Answer:** As part of developing the proposed rule, we met with and sought advice from representatives of the insurance industry, the surety community, and the banking community. At most meetings with the financial industry, we provided an overview of the proposed rule, as currently envisioned. That overview included information that has previously been publically communicated on the EPA's general approach to the cost formula, which is currently under development. Those materials also included the agency's current thinking on when the instruments would pay, the costs for which they would pay, and to whom they would pay. These meetings and materials were not specifically designed to assess the availability of instruments; however, we are providing the materials that we shared.

## PERCHLORATE

**Question:** In early 2011, the EPA published a Regulatory Determination on Perchlorate, concluding that perchlorate should be regulated under the federal Safe Drinking Water Act (SDWA). The EPA did not, however, demonstrate that perchlorate meets any of the statutory criteria in its Regulatory Determination on Perchlorate. In early 2013, the EPA issued a notice of their intent to set a Maximum Contaminant Level for perchlorate.

Perchlorate is both a manufactured chemical that is also found naturally in low concentrations in water systems in certain parts of the country. Perchlorate was also used as a pharmaceutical until it was determined to be ineffective at impacting thyroid functions and, for this reason, has been the focus of study for decades.

The levels of perchlorate currently present in affected water systems are generally between 1-6 parts per billion, far below the well documented levels where there is any affect on the human body, let alone an adverse affect. Moreover, the EPA has not collected updated occurrence data on the presence of perchlorate in water systems since 2004. Basing a regulatory determination on data that is over ten years old fails to account for the well documented trend of declining perchlorate levels in the affected water systems largely in the Western United States.

As a result of this, when the EPA's own inspector general looked at the proposed regulation, he determined that it would be the most disruptive and expensive action the EPA could possibly take--with no positive impact on the health and welfare of Americans. He called it a \$70-100 billion dollar decision for the EPA, almost entirely because of the impact it would have on water systems, farmers and ranchers.

Administrator McCarthy has stated her commitment to basing the EPA's decisions on the best available science. This is consistent with what the law requires. At present, the EPA is attempting to finalize its regulation for perchlorate in drinking water. The overwhelming scientific evidence, however, is that there is no public health benefit in additional federal regulation of perchlorate.

How will the EPA redeploy resources toward contaminants that are clearly established by science to pose a high risk? Should fewer resources be applied to prospective regulation, such as the ongoing consideration of perchlorate that does not have a strong scientific basis?

**Answer:** The Agency makes every effort to ensure that appropriate resources are allocated to identifying contaminants in drinking water that may require regulation, making determinations to regulate new contaminants as appropriate and reviewing existing regulations and revising them if warranted. In February 2011, the EPA made a determination to regulate perchlorate because it met the three statutory requirements: 1) perchlorate may have adverse health effects because scientific research indicates that perchlorate can disrupt the thyroid's ability to produce hormones needed for normal growth and development; 2) there is a substantial likelihood that perchlorate

occurs with frequency at levels of health concern in public water systems because, among other considerations, monitoring data show over four percent of public water systems have detected perchlorate, and 3) there is a meaningful opportunity for health risk reduction for the 5.2 to 16.6 million people who may be served drinking water containing perchlorate. Further information regarding these findings can be found at 76 Federal Register 7762 (February 11, 2011). The EPA has not yet proposed a National Primary Drinking Water Regulation (NPDWR) for perchlorate. After the EPA's regulatory determination, the Agency collaborated with scientists at FDA to develop a Physiologically-Based Pharmacokinetic (PBPK) model as recommended by the Science Advisory Board. The agency is in the process of conducting a peer review of this model prior to moving forward with development of a proposed rule.